

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE  
Division**

In re:

Bk. No. -09-14361-MWVJames B. Irving and Elaine M. Irving,

Debtors

Chapter 13

**AMENDED  
CHAPTER 13 PLAN DATED January 14, 2010**

- [ ] If this box is checked, this plan contains certain special provisions set out in paragraph 13 below.  
Otherwise, the plan includes no provisions deviating from LBF 3015-1A, the model plan in effect at the time of the filing of this case in this Court.

Debtor(s):	James B. Irving	SS # xxx-	5529
	Elaine M. Irving	<del>SS</del> -# xxx- xx-	7447

**1. PLAN PAYMENTS**

The applicable commitment period pursuant to 11 U.S.C. § 1325(b)(4) is not less than 3 years. This is a 60 month plan.

Plan payments: Debtor(s) to pay to Trustee monthly:	<u>\$697.00</u>
Number of months:	<u>X60</u>
Total of monthly plan payments:	<u>\$41,820.00</u>

In addition, for each year during the term of the plan, all tax refunds in excess of \$0.00 will be remitted within 14 days of receipt to the Trustee as additional disposable income to fund the plan. Deviation from this requirement in a given year will be considered by the Court only upon the filing of a motion asserting extenuating circumstances; any such motion must be filed within 30 days of the date of the filing of the tax return at issue.

Other plan payment provisions, if any:

**2. ADMINISTRATIVE CLAIMS**

Trustee's fee pursuant to 11 U.S.C. § 1302 and Debtor's attorney's fees:

A. Trustee's estimated fees and expense (10% of the total to be paid):	<u>\$4,178.88</u>
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B. Attorney's fee and expenses requested to be paid through the plan, payable pursuant to AO 2061-1, notwithstanding 11 U.S.C.

§1325(a)(5)(B)(iii):

Attorney's fee	<u>\$0.00</u>
Expenses	<u>\$0.00</u>

C. Other:

\$0.00**3. DOMESTIC SUPPORT OBLIGATIONS**

The following DSO claims will be paid in full through the plan:

<u>Creditor</u>	<u>Estimated Total Prepetition Claim</u>
NONE	

**4. PRIORITY CLAIMS**

<u>Creditor</u>	<u>Interest Rate</u>	<u>Estimated Total Prepetition Claim</u>
Internal Revenue Service	0%	\$21,201.11

**5. SECURED CLAIMS (PRIMARY RESIDENCE)**Residence located at: 65 Hampton Meadows, Hampton NHThe Debtor(s) estimate the fair market value of such primary residence to be: \$382,000.00

Regular mortgage payments and arrearage to be paid as follows:

☒ Outside the plan. The mortgage is current and will continue to be directly payable by the Debtor(s).☒ The mortgage is not current. Regular postpetition payments will be made directly by the Debtor(s) and the prepetition arrearage only is to be paid through the plan, as follows:

<u>Mortgagee</u>	<u>Estimated Total Prepetition Arrearage</u>
1) <u>BAC Home Loans Servicing LP</u>	<u>\$14,000.00</u>

**6. SECURED CLAIMS (OTHER)**

Current regular payments are to be made directly by the Debtor(s). Prepetition arrearage amounts, if any, are to be paid through the plan:

<u>Name of Creditor</u>	<u>Collateral</u>	<u>Estimated Total Prepetition Arrearage</u>
Brookline Bank	2008 Nissan (new cab)	\$0.00
Newbury Yacht Club	Dock Slip	\$0.00
Toyota Motor Credit	2003 Lexus RX 300	\$0.00

<u>Name of Creditor</u>	<u>Collateral</u>	<u>Estimated Total Prepetition Arrearage</u>
<u>Vacation Development, Inc.</u>	<u>Disney timeshare</u>	<u>\$0.00</u>

**7. SECURED CLAIMS TO BE MODIFIED**

The following claims are modifiable under the provisions of the Bankruptcy Code and shall be paid through the plan as indicated.

Name of Creditor: BAC Home Loans Servicing LP  
 Collateral: 65 Hampton Meadows, Hampton, NH  
 Valuation: \$382,000.00  
 Proposed Treatment: The creditor's claim is wholly unsecured, and its lien, recorded on March 8, 200

**8. SECURED CLAIMS WHERE COLLATERAL TO BE SURRENDERED**

Upon confirmation, the automatic stay is lifted as to any collateral treated as surrendered or abandoned and such collateral shall be deemed abandoned from the estate.

Name of Creditor: Suntrust Mortgage /CC 510  
 Collateral: 9310 Wentworth Lane, Port St. Lucie, FL

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 Collateral: 9310 Wentworth Lane, Port St. Lucie, FL

**9. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Executory contracts and unexpired leases are assumed or rejected as follows:

<u>Creditor/Lessor Property Description</u>	<u>Assumed/Rejected</u>	<u>Proposed Cure Amount/Period</u>
NONE		

**10. UNSECURED CLAIMS**

Unsecured creditors' claims total \$250,149.18 (including, if applicable, the unsecured portion of claims modified under paragraph 7). The percentage to be paid toward these claims will be determined after the bar date for filing claims has passed and will be specified in a motion to allow claims. Unsecured creditors will begin receiving payment on a pro rata basis with any secured arrearage and priority claims after the issuance of such an order. If all scheduled claims are allowed, the percentage distribution to creditors is estimated at 1%.

## 11. GENERAL PLAN PROVISIONS

- A. **Duty to Provide Tax Returns:** The Debtor(s) have an ongoing obligation to provide a copy of each federal income tax return (or any request for extension) directly to the Trustee within seven days of the filing of the return (or any request for extension) with the taxing authority.
- B. **Allowance of Claims:** In the event that a proof of claim is filed in an amount different from the amount listed in this plan, the proof of claim amount shall be deemed to be the correct amount unless the Debtor(s) or another party in interest successfully objects to the proof of claim.
- C. **Property of the Estate and Insurance:** All property shall remain property of the estate until discharge. Pursuant to 11 U.S.C. § 1306(b), the debtor(s) will remain in possession of all property of the estate unless a provision of this plan, or an order of this Court, specifically states otherwise. The Debtor(s) shall maintain all insurance required by law and contract upon property of the estate and the Debtor(s)' property.
- D. **Retention of Lien:** All secured creditors shall retain the liens securing their claims unless otherwise stated.
- E. **Application of Payments Under This Plan:**
  - 1 Pursuant to 11 U.S.C. § 524(i), payments received by holders and/or servicers of mortgage claims for ongoing postpetition installment payments shall be applied and credited to the Debtor(s)' mortgage account as if the account were current and no prepetition default existed on the petition date, in the order of priority specified in the note and security agreement and applicable non-bankruptcy law. Postpetition installment payments made in a timely manner under the terms of the note shall be applied and credited without penalty.
  - 2 If a creditor applies payments in a manner not consistent with the terms of this plan, or applies Trustee payments to postpetition costs and fees without prior approval of this Court, such actions may be a violation of 11 U.S.C. § 524(i).
- F. **Duty of Mortgage Servicer to Provide Loan Information:**
  - 1 Upon written request of the Debtor(s), any mortgage servicer or its successor shall provide to the Debtor(s) and/or the Debtor(s)' attorney all information with respect to the Debtor(s)' mortgage loan as it would provide absent a bankruptcy proceeding, including contractual monthly payment changes. The term "information" as used herein shall include, but is not limited to: (a) a coupon book or monthly statements to help the Debtor(s) properly make monthly payments, (b) addresses to which to send payments and to direct inquiries, (c) balance and payoff information if requested, and (d) if applicable, escrow analyses, notices of rate adjustments and the like. The Debtor(s) shall not make any claim against the mortgage servicer, the secured creditor or their successors for any violation of the automatic stay or any discharge injunction resulting from its compliance with this section.
  - 2 Upon written request of the Debtor(s)' counsel, any of the information requested to be provided to the Debtor(s) in paragraph F.1 above shall also be provided to the Debtor(s)' counsel.
- G. **Release of Certificate of Title Upon Satisfaction of Secured Claim:**

- 1 Upon satisfaction or other discharge of a security interest in a motor vehicle, mobile home, or in any other property of the bankruptcy estate for which the certificate of title is in the possession of a secured creditor, such creditor shall within 10 days after demand and, in any event, within 30 days of receipt of the notice of the entry of the discharge order, execute a release of its security interest on said title or certificate, in the space provided therefore on the certificate or as the Division of Motor Vehicles prescribes, and mail or deliver the certificate and release to the Debtor(s) or to the attorney for the Debtor(s).
- 2 Confirmation of this plan shall impose an affirmative and direct duty on each such secured creditor to comply with this paragraph. This provision shall be enforced in a proceeding filed before this Court and each such creditor consents to such jurisdiction by failure to file any timely objection to this plan. Such an enforcement proceeding may be filed by the Debtor(s) in this case either before or after the entry of the discharge order and either before or after the closing of this case. The Debtor(s) specifically reserve the right to file a motion to reopen this case under 11 U.S.C. § 350 to pursue the rights and claims provided for therein.

## 12. LIQUIDATION ANALYSIS

In the event of a liquidation under chapter 7, I/we would claim the state/federal exemptions, based upon which unsecured creditors would receive 0%.

### A. **REAL ESTATE: Residential**, located at: 65 Hampton Meadows, Hampton NH

<u>Description</u>	<u>Fair Market Value</u>	<u>Liens</u>	<u>Exemption Amount and Cite</u>	<u>Available Chapter 7</u>
Townhouse	382,000.00	\$447,000	0.00	0.00
	Total non-exempt value		0.00	

### REAL ESTATE: Non-residential, located at: 9310 Wentworth Lane

<u>Description</u>	<u>Fair Market Value</u>	<u>Liens</u>	<u>Exemption Amount and Cite</u>	<u>Available Chapter 7</u>
Winter Home	\$171,000	\$232,000	0.00	0.00
	Total non-exempt value		0.00	

### B. **NON-EXEMPT TANGIBLE ASSETS:**

<u>Description</u>	<u>Fair Market Value</u>	<u>Liens</u>	<u>Exemption Amount and Cite</u>	<u>Available Chapter 7</u>
Various	\$74,653.00	\$77,954.64		
	Total non-exempt value		3,101.36	

### C. **NON-EXEMPT INTANGIBLE ASSETS:**

<u>Description</u>	Fair Market <u>Value</u>	<u>Liens</u>	<u>Exemption Amount and</u>	
			<u>Cite</u>	<u>Available Chapter 7</u>
			\$5,650.00 11 U.S.C.	3,101.36
			sec. 522 et seq.	
	Total non-exempt value		0.00	

**13. SPECIFIC NON-CONFORMING SPECIAL PLAN PROVISIONS (if any):**

I/We declare under penalty of perjury that the foregoing is true and correct.

Date: January 14, 2010

/s/ James B. Irving, Debtor

Date: January 14, 2010

/s/ Elaine M. Irving, Debtor

*James B. Irving*  
*Elaine M. Irving*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

IN RE:

JAMES B. IRVING  
ELAINE M. IRVING  
DEBTORS

CHAPTER 13  
CASE NO. 09-14361-MWV

**NOTICE OF HEARING ON DEBTOR'S AMENDED CHAPTER 13 PLAN**

The above-cited Debtors' Amended Chapter 13 Plan is scheduled for a hearing before the United States Bankruptcy Court, 1000 Elm Street, 11th Floor, Courtroom 1, Manchester, New Hampshire, 03101 on March 11, 2010 at 9:00 a.m.

**YOUR RIGHTS MAY BE AFFECTED. You should read the attached Amended Chapter 13 Plan carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult one.**

If you have no objection to the motion, no action is required by you. If you do object to the motion, or if you wish to be heard on any matter regarding the motion, you must file a written objection with the Clerk, United States Bankruptcy Court, 1000 Elm Street, Suite 1001, Manchester NH 03101 on or before March 4, 2010.

A copy of your objection or statement must be mailed or delivered to the undersigned Debtor or Debtor's attorney at the address set forth below, the Chapter 7 or Chapter 13 Trustee, the United States Trustee, and a certificate of such action must be filed with the Clerk. If you file an objection or statement, you must also appear at the hearing on the date and time set forth above.

**If no objections are filed by the objection deadline stated above, March 4, 2010, the Court may enter an order granting the Debtors Amended Chapter 13 Plan without a hearing.**

Dated: February 2, 2010

/s/ Herbert Weinberg

Herbert Weinberg, (BNH #04060)  
Rosenberg & Weinberg  
805 Turnpike Street, Suite 201  
North Andover, MA 01845  
(978) 683-2479  
hweinberg@jrhwlaw.com

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE

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IN RE: )  
)  
)

JAMES B. IRVING )  
ELAINE M. IRVING )  
DEBTORS )  
\_\_\_\_\_)

CHAPTER 13  
CASE NO. 09-14361-MWV

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Notice of Hearing on Debtors Amended Chapter 13 Plan and Amended Chapter 13 Plan was this day sent, by mailing, first class mail, postage prepaid, or by the Court's ECF system to the following and those on the attached lists.

Mr. & Mrs. James B. Irving  
65 Hampton Meadow  
Hampton, NH 03842

Lawrence P. Sumski, Trustee  
815 Elm Street, 5<sup>th</sup> Floor  
Manchester, NH 03101

Mortgage Electronic Registration Systems  
PO Box 2026  
Flint, MI 48501-2026

BAC Home Loans Servicing, LP  
c/o Prober & Raphael, A Law Corporation  
20750 Ventura Blvd.  
Woodland Hills, CA 91364

Signed under the penalties of perjury this 2<sup>nd</sup> day of February 2010.

/s/ Herbert Weinberg

Herbert Weinberg, (BNH #04060)  
Rosenberg & Weinberg  
805 Turnpike Street, Suite 201  
North Andover, MA 01845  
(978) 683-2479  
hweinberg@jrhwlaw.com



Ben-Ezra & Katz  
2901 Stirling Road  
Fort Lauderdale, FL 33312

CHASE  
800 Brookside Blvd.  
Westerville, OH 43081

GEMB/Walmart  
P.O. Box 981400  
El Paso, TX 79998

American Express  
P.O. Box 297812  
Fort Lauderdale, FL 33329

Citi  
P.O. Box 6241  
Sioux Falls, SD 57117

Home Depot/Citibank  
P.O. Box 6497  
Sioux Falls, SD 57117

BAC Home Loan Servicing LP  
450 American Street, SV416  
Simi Valley, CA 93065

Diner's Club  
P.O. Box 6003  
The Lakes, NV 88901

HSBC  
P.O. Box 81622  
Salinas, CA 93912

Bank of America  
P.O. Box 1390  
Norfolk, VA 23501

Discover Financial Services  
P.O. Box 15316  
Wilmington, DE 19850

IRS  
Insolvency Group, Stop 20800  
P.O. Box 9112  
Boston, MA 02203

Bank of America  
P.O. Box 17054  
Wilmington, DE 19884

Emerge/FNBO  
P.O. Box 105375  
Atlanta, GA 30348

KOHLs/Chase  
N56 W 17000 Ridgewood Drive  
Menomonee Falls, WI 53051

Barclays Bank Delaware  
125 South West Street  
Wilmington, DE 19801

First Premier Bank  
601 S. Minnesota Avenue  
Sioux Falls, SD 57104

MACYS  
9111 Duke Blvd  
Mason, OH 45040

Brookline Bank  
P.O. Box 61787  
King of Prussia, PA 19406

GE Capital/Paypal Buyer Credit  
P.O. Box 981400  
El Paso, TX 79998

Newburyport Yacht Club  
300 Merrimac Street  
Newburyport, MA 01950

Capital Management Services  
726 Exchange Street, Suite 700  
Buffalo, NY 14210

GEMB/JC Penny  
P.O. Box 981131  
El Paso, TX 79998

Sears/CBSD  
P.O. Box 6189  
Sioux Falls, SD 57117

Capital One  
P.O. Box 30281  
Salt Lake City, UT 84130

GEMB/Lowes  
P.O. Box 981064  
El Paso, TX 79998

Suntrust Mortgage/CC 510  
P.O. Box 26149  
Richmond, VA 23260

CCS/First Savings Bank  
500 E 60<sup>th</sup> Street North  
Sioux Falls, SD 57104

GEMB/Sams Club  
P.O. Box 981064  
El Paso, TX 79998

Toyota Motor Credit  
1500 W. Park Drive  
Westborough, MA 01581

Vacation Development, Inc.  
Member Accounting  
P.O. Box 470727  
Celebration, FL 34747

VISA Dept. Stores National Bank  
9111 Duke Blvd.  
Mason, OH 45040

Wells Fargo Financial Cards  
3201 N. 4<sup>th</sup> Avenue  
Sioux Falls, SD 57104